

TYPES of OCCUPANTS

Whenever there is more than one person living in a Housing ACT property there may be a question over their legal status.

TENANTS — SOLE OR JOINT?

Any person whose name is on a tenancy agreement with Housing ACT is a tenant. If there is only one name on the agreement, then that person is the sole tenant.

If there are multiple names on the agreement, then (unless the agreement says otherwise) those people are joint tenants. Joint tenants have 'joint and several' liability, meaning that the tenants undertake to comply with the agreement both individually and as a group. The main effect of this is that Housing ACT can pursue any one joint tenant for any and all debts arising out of the tenancy, even where the debt results entirely from the actions of another tenant.

In a joint tenancy one of the joint tenants can, where there is a periodic tenancy, terminate the tenancy without the consent of the other joint tenants provided that all notice requirements are strictly complied with. This means that they need to give three weeks notice in writing specifying the date when the tenancy will end, along with a correct description of the premises and the parties to the agreement.

GUESTS

Tenants have the right to have guests stay in their homes. This might be a friend, a member of your family, a visitor from overseas — anyone you invite to stay with you on a

temporary basis. You do not have an obligation to tell the Housing ACT about your guest, and you are not required to pay any extra rent because you have a guest. This is simply part of the fair use of the premises for 'residential purposes'.

RESIDENTS

If you receive a rent rebate from Housing ACT, then you have an obligation to tell Housing ACT about anyone who is a resident in your home, and you must also notify Housing ACT of his or her income. This is because the size of your rent rebate is based on your household income — see **Rent and Rent Rebates** (Housing fact sheet Number 2).

At what point does a guest become a resident? This is not entirely clear, but there is a distinction between a person who stays as a guest for a short while and someone who starts living or residing in the place. One thing is very important to remember: the longer a person is staying at your place the more likely it is that they will be regarded as a resident — so simply calling someone a 'guest' may not be enough to avoid extra rent being payable. Sometimes someone starts off being a guest but stays longer

than expected. The test as to what they really are is based on the intention of the people involved. Factors that will be taken into account in determining the parties' intention are:

- ▶ Is the person giving your address as their mailing address?
- ▶ The length of time they have been there.
- ▶ If this is purely a temporary arrangement, what are the reasons for that?
- ▶ Is it intended that the person will keep living there, if so why?
- ▶ What were the reasons the person came to be staying there?
- ▶ What are the domestic arrangements? For example, are household responsibilities shared? Are bills shared?
- ▶ Are any bills in the name of the person staying there?

The best course of action is to tell Housing ACT about the person if you are in any doubt. If you don't, and Housing ACT finds out about the person and classes the person as a resident, you risk getting a large arrears debt once their income is included in the rebate calculation and the new rebate is backdated. And if you can't



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6247 2177

pay the arrears, you may face eviction proceedings.

Also don't forget that a resident may be deemed to have an income if Housing ACT believes such an income is 'reasonably available' to that person, even if they are not actually receiving that income. For example, a person may choose not to claim a Centrelink benefit that they are entitled to, but Housing ACT can still deem the amount of that benefit to be the person's income and adjust the rebate accordingly.

Although rebated rent is based on the income of the whole household, Housing ACT can only demand rent from the tenant (or tenants) of the property, not from other residents. So it is important for the tenant/s to have a clear arrangement with other residents about their contribution to the rent.



Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

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